

ESTTA Tracking number: **ESTTA389411**

Filing date: **01/20/2011**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92050789
Party	Plaintiff Nartron Corporation
Correspondence Address	HOPE V SHOVEIN BROOKS KUSHMAN PC 1000 TOWN CENTER, 22ND FLOOR SOUTHFIELD, MI 48075 UNITED STATES rtuttle@brookskushman.com, hshovein@brookskushman.com
Submission	Plaintiff's Notice of Reliance
Filer's Name	Hope V. Shovein
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Signature	/hope v shovein/
Date	01/20/2011
Attachments	Rebuttal Notice of Reliance 012011.pdf (5 pages)(77899 bytes) Rebuttal EX1 - RespEx06 - TM App 77826570 COPYSMART (HP).pdf (3 pages)(80972 bytes) Rebuttal EX2 - RespEx60 - Amazon.com Smartparts.pdf (5 pages)(266576 bytes) Rebuttal EX3 - RespEx72 - onetouch.com.pdf (1 page)(127553 bytes) Rebuttal EX4 - RespEx42 HP TouchSmart PCs.pdf (2 pages)(466091 bytes) Rebuttal EX5 - MasterLock bioMETRX no SmartTouch.pdf (10 pages)(608853 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

NARTRON CORPORATION

Petitioner,

v.

Cancellation No. 92050789

**HEWLETT-PACKARD
DEVELOPMENT COMPANY, L.P.,**

Respondent.

PETITIONER'S REBUTTAL NOTICE OF RELIANCE

Petitioner Nartron Corporation ("Petitioner" or "Nartron") hereby gives notice that pursuant to 37 CFR § 2.122 they will rely on the materials listed below as rebuttal evidence to Respondent's Notice of Reliance, dated November 22, 2010.

A. Printed Publications

1. Respondent identified its September 15, 2009 U.S. Trademark Application Serial No. 77/826,570 for the mark COPYSMART – based on intent-to-use under Section 1(b) – as Exhibit 6 to its Notice of Reliance as evidence that "Respondent has also *used and registered* a series of other marks in International Class 009 ending in the term 'SMART.'" (*Emphasis added.*) The attached **Rebuttal Exhibit 1** is a current printout of the TESS record for Application Serial No. 77/826,570, dated January 19, 2011 and accessed on January 19, 2011, showing that a Statement of Use has not been filed. This printout is relevant as rebuttal evidence to show that Respondent's intent-to-use application submitted at Exhibit 6 is not evidence of use *or* registration and should be given no consideration as such in this proceeding.

B. Other Printed Publications

Respondent's Notice of Reliance referenced several documents and a video from the Internet that are not accessible at the URLs provided in Respondent's Notice of Reliance. The Board recently held in *Safer, Inc. v. OMS Investments, Inc.*, Opposition No. 91176445 (T.T.A.B. 2010), that Internet printouts are admissible by Notice of Reliance if the printouts identify the date "accessed and printed, and its source (e.g., the URL)." *Safer* acknowledged that documents obtained through the Internet are transitory in nature such that "any relevant or significant change to the information submitted by one party is a matter for rebuttal by the opposing party."


Several of the URLs identified in Respondent's November 22, 2010 Notice of Reliance – or on the face of the Internet printouts attached to Respondent's Notice of Reliance – are not associated with an active website or the same content appearing in Respondent's exhibits. True and correct copies of printouts of the existing webpages at the URLs listed in Respondent's Notice of Reliance are attached hereto as Rebuttal Exhibits as numbered below.

2. The URL listed as Exhibit 60 to Respondent's Notice of Reliance, http://www.amazon.com/Smartparts-SP8PRTC-Printer-Cartridge-Digital/dp/B0015657UG/ref=sr_1_3?ie=UTF8&s=electronics&qid=1290206753&sr=8-3-catcorr, does not correspond with printouts that Respondent attached as Exhibit 60. Rather, typing this URL into a web browser results in a webpage displaying the message: "Sign up to be notified when this item becomes available." **Rebuttal Exhibit 2** is a printout of this URL dated January 19, 2011, and accessed on January 19, 2011. This printout is relevant as rebuttal evidence to show that the Internet evidence Respondent submitted should not be considered as an offer for sale of the subject product and should be given no consideration in this proceeding.

3. The URL listed as Exhibit 72 to Respondent's Notice of Reliance, <http://onetouch.com/>, does not correspond with printouts that Respondent attached as Exhibit 72. Rather, typing this URL into a web browser results in a webpage displaying the message: "One Touch Systems has moved to a new web address." **Rebuttal Exhibit 3** is a printout of this URL dated January 19, 2011, and accessed on January 19, 2011. This printout is relevant as rebuttal evidence to show that the Internet evidence Respondent submitted should not be considered evidence of actual use of the ONE TOUCH mark, or as an offer to sell any product or service under the ONE TOUCH mark, and should be given no consideration in this proceeding.
4. The URL <http://www.hp.com/united-states/campaigns/touchsmart/> listed as Exhibit 42 to Respondent's Notice of Reliance does not correspond with the videos that Respondent attached as Exhibit 42. Instead, typing this URL into a web browser results in a web page showing an option to play a single video that does not identify the specific product. **Rebuttal Exhibit 4** is a printout of this URL dated January 19, 2011, and accessed on January 19, 2011. This printout is relevant as rebuttal evidence to show that the Internet evidence Respondent submitted no longer exists and should be given no consideration in this proceeding. Indeed, Respondent failed to indicate the relevance of Respondent's Exhibit 42 in its Notice of Reliance.
5. Respondent relies on Exhibits 53 and 54 as evidence of "actual use" of the SMARTTOUCH GDO mark (as shown in Registration No. 3,574,250). Attached as **Rebuttal Exhibit 5** are printouts from MasterLock.com (namely, http://review.masterlock.com/pdfs/Final_GDO_press_release.pdf and

http://www.masterlock.com/search/no_results.jsp?q=smarttouch), biometrx.net, and smarttouchstore.com (namely, <http://smarttouchstore.com/AboutUs>, www.smarttouchstore.com/pindex.asp, <http://www.smarttouchstore.com/ProductDetails.asp?ProductCode=BIobox>, and <http://www.smarttouchstore.com/ProductDetails.asp?ProductCode=BioVaultBlack>), printed and accessed on January 20, 2011, which are relevant to show that the product that may have once been identified as SMARTTOUCH GDO is no longer produced. The 2007 press release at http://review.masterlock.com/pdfs/Final_GDO_press_release.pdf indicates that the product would be available at www.smarttouchstore.com, which does not appear to have any products currently available for purchase, let alone a product identified as SMARTTOUCH GDO. Furthermore, the 2007 press release indicates that more information will be available at www.biometrx.net, which does not lead to an active website. Finally, a search of MasterLock.com for “smarttouch” does not produce any results.

BROOKS KUSHMAN P.C.

By: 
ROBERT C.J. TUTTLE
HOPE V. SHOVEIN
1000 Town Center,
Twenty-Second Floor
Southfield, Michigan 48075
(248) 358-4400

Attorneys for Petitioner

Dated: **January 20, 2011**

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of **PETITIONER'S REBUTTAL NOTICE OF RELIANCE** has been served on January 20, 2011 by:

___ delivering

✓ mailing (via First-Class mail)

a copy to:

MARTIN R. GLICK
DIANA D. DiGENNARO
HOWARD, RICE, NEMEROVSKI,
CANADY, FALK & RABKIN
Three Embarcadero Center
Seventh Floor
San Francisco, CA 94111

Attorneys for Respondent



Hope V. Shovein

Thank you for your request. Here are the latest results from the [TARR web server](#).

This page was generated by the TARR system on 2011-01-19 10:29:39 ET

Serial Number: 77826570 [Assignment Information](#) [Trademark Document Retrieval](#)

Registration Number: (NOT AVAILABLE)

Mark

COPYSMART

(words only): [COPYSMART](#)

Standard Character claim: Yes

Current Status: Notice of Allowance (NOA) sent (issued) to the applicant. Applicant must file a Statement of Use or Extension Request within six months of the NOA issuance date.

Date of Status: 2010-08-10

Filing Date: 2009-09-15

The Notice of Allowance Date is: 2010-08-10

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: [Principal](#)

Law Office Assigned: [LAW OFFICE 117](#)

Attorney Assigned:
[KELLY JOHN M](#)

Current Location: [700 -Intent To Use Section](#)

Date In Location: 2010-08-10

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. [Hewlett-Packard Development Company, L.P.](#)

Composed Of:

[HPQ Holdings, LLC, a Delaware limited liability company](#)

Address:

[Hewlett-Packard Development Company, L.P.](#)

[11445 Compaq Center Drive West](#)

[Houston, TX 77070](#)

[United States](#)

Legal Entity Type: [Limited Partnership](#)

State or Country Where Organized: [Texas](#)

Phone Number: [650.857.5144](#)

Fax Number: [650.813.3095](#)

REBUTTAL EXHIBIT 1

GOODS AND/OR SERVICES

International Class: 009**Class Status:** Active

Computer printers; laser printers; inkjet printers; scanners; photocopiers; facsimile machines; computer peripherals; computer software for optimizing image and print quality; computer software for color matching and reproduction in imaging and printing; computer software for use in the field of printing and photocopying; computer hardware

Basis: 1(b)**First Use Date:** (DATE NOT AVAILABLE)**First Use in Commerce Date:** (DATE NOT AVAILABLE)

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2010-08-10 - NOA E-Mailed - SOU Required From Applicant

2010-06-15 - Notice Of Publication E-Mailed

2010-06-15 - Published for opposition

2010-05-12 - Law Office Publication Review Completed

2010-05-12 - Assigned To LIE

2010-05-03 - Approved For Pub - Principal Register

2010-04-09 - Teas/Email Correspondence Entered

2010-04-09 - Communication received from applicant

2010-04-09 - TEAS Response to Office Action Received

2009-12-11 - Notification Of Non-Final Action E-Mailed

2009-12-11 - Non-final action e-mailed

2009-12-11 - Non-Final Action Written

2009-11-30 - Assigned To Examiner

2009-09-19 - Notice Of Pseudo Mark Mailed

2009-09-18 - New Application Office Supplied Data Entered In Tram

2009-09-18 - New Application Entered In Tram

ATTORNEY/CORRESPONDENT INFORMATION

Correspondent

HEWLETT-PACKARD COMPANY

REBUTTAL EXHIBIT 1

3000 HANOVER ST # MS1051
PALO ALTO, CA 94304-1112
Phone Number: 650.857.5144
Fax Number: 650.813.3095

REBUTTAL EXHIBIT 1

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Smartparts SP8PRTC Printer Cartridge for SP8PRT Digital Frame

by [SmartParts](#)

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What Do Customers Ultimately Buy After Viewing This Item?



97% buy

[Smartparts SP8PRT 8-Inch Digital Picture Frame with Built-In Printer and OptiPix Software](#)

(2)

\$44.99



3% buy

[Smartparts SPX8 8-Inch Syncpix Digital Picture Frame](#)

(107)

\$65.00

[Explore similar items](#)

Technical Details

- Refill print cartridge for SP8PRT 8-inch digital frame
- 36 prints with each refill cartridge

REBUTTAL EXHIBIT 2

- 4x6 size
- 300 dpi on each print
- ink/paper included

Product Details

Product Dimensions: 5.1 x 2.2 x 4.9 inches ; 12 ounces

Shipping Weight: 1 pounds

Shipping: Currently, item can be shipped only within the U.S.

ASIN: B0015657UG

Item model number: SP8PRTC

Average Customer Review: [Be the first to review this item](#)

Date first available at Amazon.com: March 1, 2008

Would you like to [update product info](#), [give feedback on images](#), or [tell us about a lower price](#)?

Product Description

Product Description

Smartparts SP8PRTC is a refill cartridge for the SP8PRT 8-inch digital picture frame. Each cartridge refill prints 36, 4x6-inch, sharp 300 dpi prints. Refill cartridge helps you share your favorite pictures with your friends using the SP8PRT digital picture frame. Frame features built-in printer that allows you to print favorite pictures straight from frame with the touch of a button. No computer hook-up necessary.

Customers Who Bought This Item Also Bought



Smartparts SP8PRT
8-Inch Digital Picture
Frame with Built-In
Pri...

(2)

\$44.99



SanDisk 2GB SD
Memory Card
(SDSDB-2048, Bulk
Package)

(224)

\$5.67

Product Ads from External Websites ([What's this?](#))

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Family Gallery Custom Mat
Picture Frames - One Photo

\$24.95

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Personalization Mall



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\$297.00

+ Free Shipping

US-Mattress.com

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REBUTTAL EXHIBIT 2

Tag this product [\(What's this?\)](#)

Think of a tag as a keyword or label you consider is strongly related to this product. Tags will help all customers organize and find favorite items.

> [Explore product tags](#)

Customer Reviews

There are no customer reviews yet.

New feature!

Help others learn more about specific qualities of this item. [\(What's this?\)](#)

> Be the first to [suggest an attribute for this item](#).

Video reviews

Amazon now allows customers to upload product video reviews. Use a webcam or video camera to record and upload reviews to Amazon.

Search Products Tagged with

[Ad feedback](#)

Customer Discussions**This product's forum**

Discussion

Replies

Latest Post

No discussions yet

[Ask questions, Share opinions, Gain insight](#)

Start a new discussion

Topic:

Active discussions in related forums

Discussion

Replies

Latest Post

[photography](#)

Image: Again notice the sharp focus in the foreground with a shallow depth of field at f2.8

40

2 hours ago

[photography](#)

how much space needed memory card

37

3 hours ago

Related forums

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REBUTTAL EXHIBIT 2

photography Best way to spend \$2000 on Canon Equipment?	12	15 hours ago
photography Recs for low-light/portrait lens with Nikon D80	5	20 hours ago
photography I would like suggestions for my next lens purchase.	15	1 day ago
photography P&S camera advice	24	1 day ago
photography Just got a Canon t2i and would like advice on a second lens	18	1 day ago
photography alot of queastions	37	2 days ago

Search Customer Discussions

Only search this product's forum

Look for Similar Items by Category

[Electronics](#) > [Camera & Photo](#) > [Accessories](#)

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REBUTTAL EXHIBIT 2

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Clothing

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REBUTTAL EXHIBIT 2






One Touch Systems web site has moved to a new web address:

Please click on the link below.

onetouchsys.com



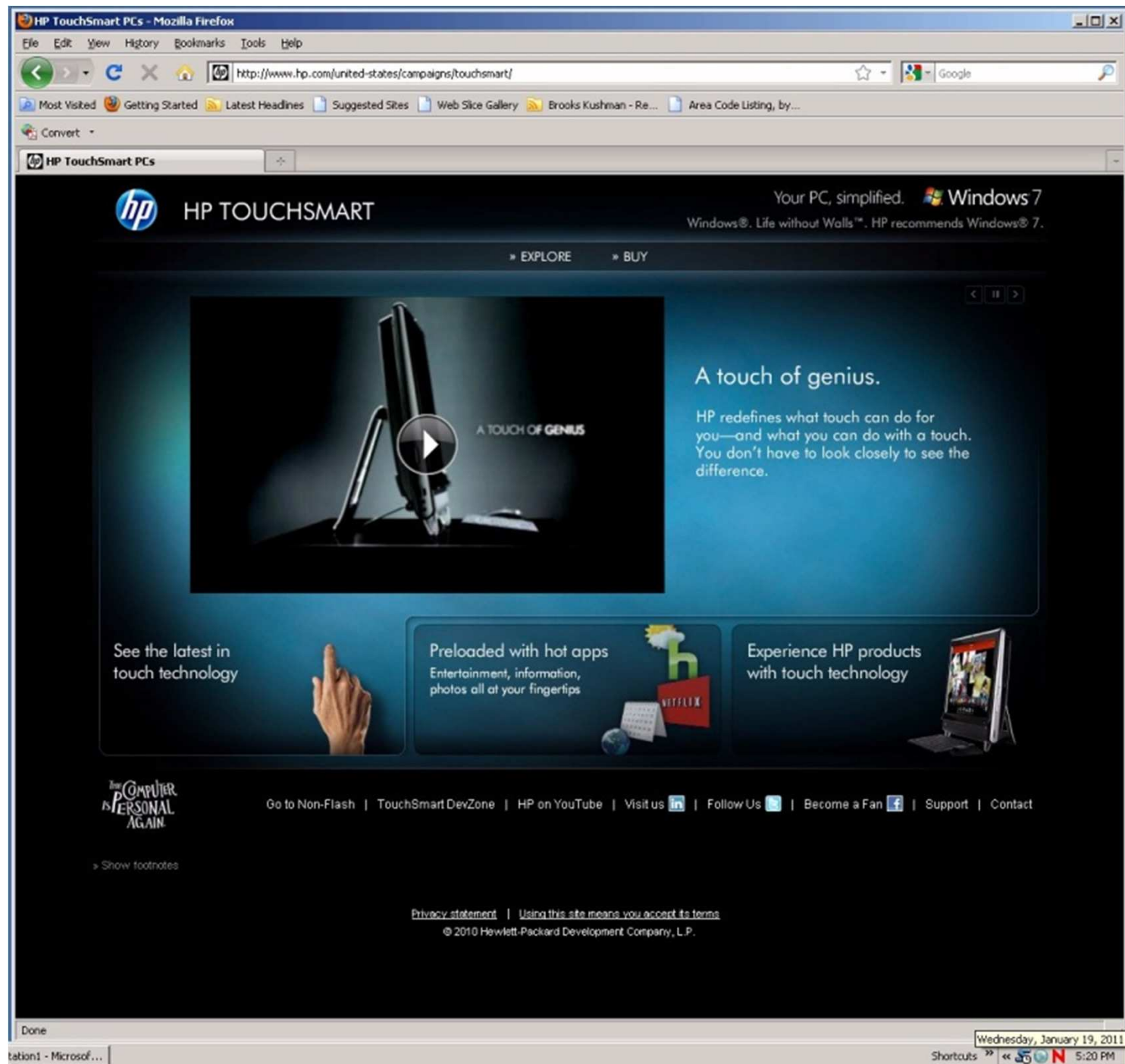


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REBUTTAL EXHIBIT 4



REBUTTAL EXHIBIT 4

Master Lock® Introduces Innovative Finger Activated Garage Door Opener

Powered by smartTOUCH™ Technology Eliminates Need for Keys, Remotes or Keypads

Milwaukee, WI: March 15, 2007, Master Lock Company LLC today announced that it has entered into an agreement with bioMETRX, Inc. (OTC BB: BMRX), a leading developer of consumer biometric enabled products, in which the "Master Lock® smartTOUCH GDO," a finger activated garage door opener developed by bioMETRX, Inc. will be marketed and sold under the Master Lock® name.

"The Master Lock® smartTOUCH GDO is an innovative and exciting product that offers consumers the convenience of opening their garage door without keys, remotes or keypads," commented Steve Hedlund, Vice President of Growth & Innovation for Master Lock®. "It is simple to set up, and easier to use than conventional digital keypads."

"At some point in their lives, everyone has held a Master Lock® product in their hands. From combination locker locks to award-winning padlocks and door locks, Master Lock® is one of the oldest and most trusted brands in consumer security," said Mark Basile, CEO of bioMETRX, Inc. "We are impressed with the innovation and design of the products from Master Lock®, especially in the areas of residential door locks and automobile security, and we at bioMETRX appreciate the value and recognition that this trusted brand will bring to the smartTOUCH GDO," Basile went on to say.

The smartTOUCH GDO has been featured on shows such as HGTV's "I Want That!", and Discovery Channel's, "It Takes a Thief!" demonstrating both the ease of use and security that this product brings to a homeowner.

"The Master Lock® smartTOUCH GDO features Powered by smartTOUCH™ technology that provide solutions to everyday problems faced by consumers such as lost keys and forgotten codes. Our goal is to empower homeowners to open their doors, or set alarms/thermostats with more security and confidence than ever by the simple touch of a finger," said Lorraine Yarde, Chief Operating Officer at bioMETRX. "We expect great consumer acceptance of the technology because a product that is Powered by smartTOUCH™ makes that product easier to use and more secure. When you add the convenience of allowing children and the elderly, who cannot always remember PIN numbers, with a simple way to come and go securely, it demonstrates the power of finger activated technology. It just makes life a little easier to manage," noted Ms. Yarde.

The Master Lock® smartTOUCH GDO will be available through the bioMETRX commercial website at www.smarttouchstore.com, major retailers and Master Lock® authorized dealers this spring. For more information about the company and its other finger activated products, please visit the company website at www.biometrx.net

About Master Lock

Master Lock is the world's largest manufacturer of padlocks and related security products, providing innovative security solutions for home, automotive, campus, power sports, bike, and storage security needs for consumers and contractors alike. Master Lock's door hardware product offering brings our industry leading innovation and our recognized qualities of strength and security to the category of home entry and interior doors. Master Lock is part of Fortune Brands, Inc. (NYSE: FO), a leading consumer brands company with annual sales exceeding \$8 billion.

For more information on Master Lock and its award winning line of consumer security products including the Night Watch deadbolt, please visit www.masterlock.com

About bioMETRX, Inc.

bioMETRX, Inc. designs, develops and markets biometrics-based products to the consumer, medical devices and small business markets under the common brand name - smartTOUCH™ ; *bioMETRX Technologies, Inc.* designs and engineers biometrics-based products for the home security, consumer electronics, medical products and patient medical information markets; *smartTOUCH Consumer Products, Inc.* tests and markets the company's biometrically secured garage door openers, thermostats, deadbolts and home alarm keypads and, *smartTOUCH Medical, Inc.*, designs, tests and markets biometrically secured medical crash carts, rolling medicine carts, portable patient medical information devices and, security and retrieval systems for electronic medical records. bioMETRX, Inc.'s entire product line is branded under the trade name "smartTOUCH™".

For more information on bioMETRX and/or the company's smartTOUCH line of products including the Garage Door Opener, visit the Company website at <http://www.biometrx.net>

Contacts:

Integrated Corporate Relations
450 Post Road East
Westport, Conn. 06880
(203) 682-8222
Attn: James Palczynski

Source: bioMETRX, Inc.
Master Lock

Bad Request (Invalid Hostname)

The page cannot be found

The page you are looking for might have been removed, had its name changed, or is temporarily unavailable.

Please try the following:

- Make sure that the Web site address displayed in the address bar of your browser is spelled and formatted correctly.
- If you reached this page by clicking a link, contact the Web site administrator to alert them that the link is incorrectly formatted.
- Click the [Back](#) button to try another link.

HTTP Error 404 - File or directory not found.

Internet Information Services (IIS)

Technical Information (for support personnel)

- Go to [Microsoft Product Support Services](#) and perform a title search for the words **HTTP** and **404**.
- Open **IIS Help**, which is accessible in IIS Manager (inetmgr), and search for topics titled **Web Site Setup**, **Common Administrative Tasks**, and **About Custom Error Messages**.

Company
Information

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Product Index

Page: **1**[BIOBOX](#)[bioBOX 2](#)[BBWM](#)[BioVaultBlack](#)[BVSecurityCable](#)[BVTransformer](#)[BVWallMount](#)[bioBOX](#)[bioBOX 2](#)[bioBOX Wall Mount](#)[bioVAULT 2.0 Black](#)[bioVAULT 2.0 Security Cable](#)[bioVAULT 2.0 Transformer / AC Adapter](#)[bioVAULT 2.0 Wall Mount](#)Page: **1**

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LARGER PHOTO



EMAIL A FRIEND

Our Price: **\$249.99**

ADD TO CART

**Availability:**

Currently Unavailable

Product Code:

BIOBOX

ADD TO WISH LIST

**Description****Technical Specs**

BioBox is the ORIGINAL Biometric Safe, and has been safeguarding your most valuable possessions for many years. BioBox uses the latest in fingerprint recognition technology but is extremely simple to program and operate. Two swipes of your finger and you are enrolled as an authorized user and only an authorized user can access the "enroll" feature to add an additional authorized user. Operation is just as simple, you can unlock your BioBox with one simple swipe of your finger and it opens in less than one second – no need to worry about carrying and securing keys or remembering pin codes.

Designed to allow you to take your valuables with you on the go, store them securely at home and is ideal for in –vehicle use (fits glove box or center console of most vehicles). Our revolutionary fingerprint activated safe provides quick, convenient access whenever needed. BioBox is engineered from heavy-gauge steel and is extremely compact – BioBox will fit easily inside a desk drawer, can be hidden inconspicuously in a closet or nightstand and can be easily secured in place, using the optional mounting bracket.

BioBox is lined with soft foam to protect your valuables and also comes with a strong elastic strap to keep the safe contents securely in place. Included with the safe is a security cable constructed from twisted steel wire, which allows you to secure your Biobox to fixed items such as a bed frame or the seat track in your car.

The high-strength mechanical locking mechanism will give you years of reliable service and is virtually impenetrable using hand tools.

BioBox offers you affordable peace of mind at the touch of a finger!

Recommended Accessories**BBWM**Our Price: **\$29.99**Add ☐

**ATTENTION – IF THE BIOBOX YOU PURCHASE
DOES NOT SAY SMARTTOUCH or
SmartBiometrics IT IS NOT AN OFFICIAL BIOBOX
– BUYER BEWARE! DO NOT BE FOOLED CHEAP
IMITATIONS!!**

Features

REBUTTAL EXHIBIT 5

- Stores up to 120 unique user templates
- Retains fingerprint data – even if batteries are changed.
- Operates on 4 AA batteries (not included)
- Black “powder coated” finish (other finishes available – minimum order requirements apply)
- Heavy duty 17 gauge steel construction
- Security Cable included
- Elastic Strap included
- Back up Mechanical Key included



www.smarttouchstore.com
1650 Sycamore
Suite 13a
Bohemia, NY 11716

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LARGER PHOTO



EMAIL A FRIEND



Our Price: **\$399.99**

ADD TO CART



Availability:

Currently Unavailable

Product Code:

BIOVAULTBLACK

ADD TO WISH LIST



Description

Technical Specs

bioVAULT 2.0 provides safe storage and easily controlled access for jewelry, handguns, weapons, ammunition, and other valuable items including: pharmaceuticals, coins, stamps, stocks, bonds, critical data and personal documents.

bioVAULT 2.0 uses proprietary fingerprint technology to verify identification and permit access. bioVAULT 2.0 is easily programmable and can store up to 50 authorized fingerprints in its flash memory. Only you decide who gains access to bioVAULT 2.0. bioVAULT 2.0 patent-pending technology is the culmination of over 20 years of biometric development. bioVAULT 2.0 requires no external computer or power to function, no key or card to provide override.

AC adapter included.

The bioVAULT 2.0 power management system allows 3 common household D-cell batteries to last up to one year under normal use. An auxiliary AC/DC adapter conveniently plugs into an electrical outlet to provide an alternate source of power. Flash memory retains fingerprint data even during complete battery or electrical failure.

Recommended Accessories

bioVAULT 2.0 Security Cable

Our Price: **\$19.00**

Add ☐



bioVAULT 2.0 Transformer / AC Adapter

Our Price: **\$14.95**

Add ☐



bioVAULT 2.0 Wall Mount

Our Price: **\$49.99**

Add ☐



Features

- Access control at the touch of a finger
- Store up to 50 authorized fingerprints
- Fingerprint recognition takes less than a second
- Full digital LCD display user interface
- Constructed of heavy-duty materials
- Soft spring-loaded doors feature low profile access
- Official NRA licensed biometric gun safety device
- DOJ (department of Justice) approved
- Endorsed by NRA firearms safety instruction program
- Dimensions: external = 12.5" Wide, 17.75" Long and 6" Deep
- Dimensions: internal = 9.5"W X 12"L X 4"D

REBUTTAL EXHIBIT 5



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